

AMENDED IN ASSEMBLY JUNE 16, 2008

AMENDED IN SENATE MARCH 25, 2008

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AMENDED IN SENATE JANUARY 24, 2008

## Senate Joint Resolution

**No. 19**

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**Introduced by Senator Ridley-Thomas  
(Coauthors: Senators Perata and Romero)**

(Coauthors: Assembly Members Coto, Davis, Dymally, Krekorian,  
Laird, Levine, Portantino, Price, and Soto)

January 7, 2008

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Senate Joint Resolution No. 19—Relative to health professionals.

### LEGISLATIVE COUNSEL'S DIGEST

SJR 19, as amended, Ridley-Thomas. Health professionals: torture.

This measure would request all relevant California agencies to notify California-licensed health professionals about their professional obligations under international law relating to torture and the treatment of detainees, as specified, and to also notify those professionals that those who participate in coercive *or enhanced* interrogation, torture, or other forms of cruel, inhuman, or degrading treatment or punishment may be subject to prosecution. *The measure would request that those health professionals report abusive interrogation practices to the appropriate authorities, as specified.* In addition, the measure would request the United States Department of Defense and the Central Intelligence Agency to remove all California-licensed health professionals from participating in prisoner and detainee interrogations, as specified.

Fiscal committee: yes.

1 WHEREAS, The citizens of the United States and the residents  
2 of the State of California acknowledge January 15th as the birthday  
3 of Dr. Martin Luther King, Jr., and mark the third Monday in  
4 January as a federal and state holiday to commemorate his lifework  
5 as a civil rights leader, an activist, and an internationally acclaimed  
6 proponent of human rights who warned, “He who passively accepts  
7 evil is as much involved in it as he who helps to perpetrate it”; and

8 WHEREAS, Dr. King challenged Americans to remain true to  
9 their most basic values, stating, “The ultimate measure of a man  
10 is not where he stands in moments of comfort and convenience,  
11 but where he stands at times of challenge and controversy”; and

12 WHEREAS, In 2002, for the first time in American history, the  
13 Bush administration initiated a radical new policy allowing the  
14 torture of prisoners of war and other captives with reports from  
15 the International Red Cross, The New England Journal of  
16 Medicine, The Lancet (a British medical journal), military records,  
17 and first-person accounts stating that California-licensed health  
18 professionals have participated in torture or its cover up against  
19 detainees in United States custody; and

20 WHEREAS, In honor of the birthday of Dr. Martin Luther King,  
21 Jr., a broad coalition of medical, human rights, and legal  
22 organizations are petitioning the State of California to warn its  
23 medical licensees of the legal prohibitions against torture and the  
24 risks of prosecution, and are demanding that the United States  
25 government remove California-licensed health professionals from  
26 coercive interrogation and torture of detainees; and

27 WHEREAS, Representatives of Californians to Stop Medical  
28 Torture are carrying petition signatures to the California State  
29 Senate, asking that the Senate warn California-licensed physicians,  
30 psychologists, nurses, and other health care workers of possible  
31 future prosecution for participation in torture — cruel and  
32 degrading practices that have become a national shame; and

33 WHEREAS, Health professionals licensed in California,  
34 including, but not limited to, physicians, osteopaths, naturopaths,  
35 psychologists, psychiatric workers, and nurses, have and continue  
36 to serve nobly and honorably in the armed services of the United  
37 States; and

38 WHEREAS, United States Army regulations and the War Crimes  
39 Act and, relative to the treatment of prisoners of war, Common  
40 Article III of the Geneva Conventions and the Convention against

1 Torture and Other Cruel, Inhuman, or Degrading Treatment or  
2 Punishment (CAT) require that all military personnel report and  
3 not engage in acts of abuse or torture; and

4 WHEREAS, CAT defines the term “torture” as “any act by  
5 which severe pain or suffering, whether physical or mental, is  
6 intentionally inflicted on a person for such purposes as obtaining  
7 from him or a third person information or a confession, punishing  
8 him for an act he or a third person has committed or is suspected  
9 of having committed, or intimidating or coercing him or a third  
10 person, or for any reason based on discrimination of any kind,  
11 when such pain or suffering is inflicted by or at the instigation of  
12 or with the consent or acquiescence of a public official or other  
13 person acting in an official capacity”; and

14 WHEREAS, In 2002, the United States Department of Justice  
15 reinterpreted national and international law related to the treatment  
16 of prisoners of war in a manner that purported to justify  
17 long-prohibited interrogation methods and treatment of detainees;  
18 and

19 WHEREAS, Physicians and other medical personnel and  
20 psychologists serving in noncombat roles are bound by  
21 international law and professional ethics to care for enemy  
22 prisoners and to report any evidence of coercion or abuse of  
23 detainees; and

24 WHEREAS, The World Medical Association (WMA) issued  
25 guidelines stating that physicians shall not use nor allow to be used  
26 their medical knowledge or skills, or health information specific  
27 to individuals, to facilitate or otherwise aid any interrogation, legal  
28 or illegal; and

29 WHEREAS, The guidelines issued by the WMA also state that  
30 physicians shall not participate in or facilitate torture or other forms  
31 of cruel, inhuman, or degrading procedures of prisoners or  
32 detainees in any situation; and

33 WHEREAS, The American Medical Association’s (AMA)  
34 ethical policy prohibits physicians from conducting or directly  
35 participating in an interrogation and from monitoring interrogations  
36 with the intention of intervening; and

37 WHEREAS, AMA policy also states that “[t]orture refers to the  
38 deliberate, systematic or wanton administration of cruel, inhumane  
39 and degrading treatments or punishments during imprisonment or  
40 detainment. Physicians must oppose and must not participate in

1 torture for any reason ... . Physicians should help provide support  
2 for victims of torture and, whenever possible, strive to change the  
3 situation in which torture is practiced or the potential for torture  
4 is great”; and

5 WHEREAS, Section 2340 of Title 18 of the United States Code  
6 defines the term “torture” as an act committed by a person acting  
7 under the color of law specifically intended to inflict severe  
8 physical or mental pain or suffering (other than pain or suffering  
9 incidental to lawful sanctions) upon another person within his  
10 custody or physical control. That section further defines the term  
11 “severe mental pain or suffering” as the prolonged mental harm  
12 caused by or resulting from: (A) the intentional infliction or  
13 threatened infliction of severe physical pain or suffering; (B) the  
14 administration or application, or threatened administration or  
15 application, of mind-altering substances or other procedures  
16 calculated to disrupt profoundly the senses or the personality; (C)  
17 the threat of imminent death; or (D) the threat that another person  
18 will imminently be subjected to death, severe physical pain or  
19 suffering, or the administration or application of mind-altering  
20 substances or other procedures calculated to disrupt profoundly  
21 the senses or personality; and

22 WHEREAS, In May 2006, the American Psychiatric Association  
23 stated that psychiatrists should not “participate directly in the  
24 interrogation of persons held in custody by military or civilian  
25 investigative or law enforcement authorities, whether in the United  
26 States or elsewhere,” and that “psychiatrists should not participate  
27 in, or otherwise assist or facilitate, the commission of torture of  
28 any person. Psychiatrists who become aware that torture has  
29 occurred, is occurring, or has been planned must report it promptly  
30 to a person or persons in a position to take corrective action”; and

31 WHEREAS, In August 2006, the American Psychological  
32 Association stated that “psychologists shall not knowingly  
33 participate in any procedure in which torture or other forms of  
34 cruel, inhuman, or degrading treatment or cruel, inhuman, or  
35 degrading punishment is used or threatened” and that “should  
36 torture or other cruel, inhuman, or degrading treatment or cruel,  
37 inhuman, or degrading punishment evolve during a procedure  
38 where a psychologist is present, the psychologist shall attempt to  
39 intervene to stop such behavior, and failing that exit the procedure”;  
40 and

WHEREAS, In June 2005, the House of Delegates of the American Nurses Association issued a resolution stating all of the following: “prisoners and detainees have the right to health care and humane treatment”; “registered nurses shall not voluntarily participate in any deliberate infliction of physical or mental suffering”; “registered nurses who have knowledge of ill-treatment of any individuals including detainees and prisoners must take appropriate action to safeguard the rights of that individual”; “the American Nurses Association shall condemn interrogation procedures that are harmful to mental and physical health”; “the American Nurses Association shall advocate for nondiscriminatory access to health care for wounded military and paramilitary personnel and prisoners of war”; and “the American Nurses Association shall counsel and support nurses who speak out about acts of torture and abuse”; and

*WHEREAS, The California Nurses Association clearly states that “the social contract between registered nurses and society is based upon a code of ethics that is grounded in the basic ethical principles of respect for human rights and dignity, the non-infliction of harm, and because these principles command that registered nurses protect or preserve life, avoid doing harm, advocate in the exclusive interest of their patients, and create a fiduciary relationship of trust and loyalty with recipients of their care”; and*

WHEREAS, In March 2005, the California Medical Association stated that it “condemns any participation in, cooperation with, or failure to report by physicians and other health professionals the mental or physical abuse, sexual degradation, or torture of prisoners or detainees”; and

WHEREAS, In November 2004, the American Public Health Association stated that it “condemns any participation in, cooperation with, or failure to report by health professionals the mental or physical abuse, sexual degradation, or torture of prisoners or detainees,” that it “urges health professionals to report abuse or torture of prisoners and detainees,” and that it “supports the rights of health workers to be protected from retribution for refusing to participate or cooperate in abuse or torture in military settings”; and

WHEREAS, The United States military medical system in Guantanamo Bay, Afghanistan, Iraq, and other foreign military

1 prisons operated by the United States failed to protect detainees’  
2 rights to medical treatment, failed to prevent disclosure of  
3 confidential medical information to interrogators and others, failed  
4 to promptly report injuries or deaths caused by beatings, failed to  
5 report acts of psychological and sexual degradation, and sometimes  
6 collaborated with abusive interrogators and guards; and

7 WHEREAS, Current United States Department of Defense  
8 guidelines authorize the participation of certain military health  
9 personnel, especially psychologists, in the interrogation of  
10 detainees as members of “Behavioral Science Consulting Teams”  
11 in violation of professional ethics. These guidelines also permit  
12 the use of confidential clinical information from medical records  
13 to aid in interrogations; and

14 WHEREAS, Evidence in the public record indicates that military  
15 psychologists participated in the design and implementation of  
16 psychologically abusive interrogation methods used at Guantanamo  
17 Bay, in Iraq, and elsewhere, including sleep deprivation, long-term  
18 isolation, sexual and cultural humiliation, forced nudity, induced  
19 hypothermia and other temperature extremes, stress positions,  
20 sensory bombardment, manipulation of phobias, force-feeding  
21 hunger strikers, and more; and

22 WHEREAS, Published reports indicate that the so-called  
23 “enhanced interrogation methods” of the Central Intelligence  
24 Agency reportedly include similar abusive methods and that agency  
25 psychologists may have assisted in their development; and

26 WHEREAS, Medical and psychological studies and clinical  
27 experience show that these abuses can cause severe or serious  
28 mental pain and suffering in their victims, and therefore may  
29 violate the “torture” and “cruel and inhuman treatment” provisions  
30 of CAT and the United States War Crimes Act, as amended by the  
31 Military Commissions Act of 2006; and

32 WHEREAS, The United States Department of Defense has  
33 failed to oversee the ethical conduct of California-licensed health  
34 professionals related to torture; and

35 WHEREAS, Waterboarding is a crime under the United States  
36 War Crimes Act and Chapter 113C (commencing with Section  
37 2340) of Title 18 of the United States Code, is a crime against  
38 humanity under international human rights law, is a war crime  
39 under humanitarian laws, and is prohibited by the United States  
40 Army Field Manual. United States district courts, state courts,

1 including, but not limited to, the Mississippi Supreme Court, and  
2 United States military tribunals have convicted defendants of  
3 criminal acts in waterboarding cases; and

4 WHEREAS, Nobel Peace Prize Laureate Dr. Martin Luther  
5 King, Jr., said, “Commit yourself to the noble struggle for human  
6 rights. You will make a greater person of yourself, a greater nation  
7 of your country and a finer world to live in”; now, therefore, be it

8 *Resolved by the Senate and the Assembly of the State of*  
9 *California, jointly*, That California-licensed health professionals  
10 are absolutely prohibited from knowingly planning, designing,  
11 participating in, or assisting in the use of condemned techniques  
12 at any time and may not enlist others to employ these techniques  
13 to circumvent that prohibition; and be it further

14 *Resolved*, That the Legislature hereby requests all relevant  
15 California agencies, including, but not limited to, the Board of  
16 Behavioral Sciences, the Dental Board of California, the Medical  
17 Board of California, the Osteopathic Medical Board of California,  
18 the Bureau of Naturopathic Medicine, the California State Board  
19 of Pharmacy, the Physician Assistant Committee of the Medical  
20 Board of California, the California Board of Podiatric Medicine,  
21 the Board of Vocational Nursing and Psychiatric Technicians, the  
22 Board of Psychology, and the Board of Registered Nursing, to  
23 notify California-licensed health professionals via newsletter,  
24 email, Web site, or existing notification processes about their  
25 professional obligations under international law, specifically  
26 Common Article III of the Geneva Conventions, the Convention  
27 against Torture and Other Cruel, Inhuman, or Degrading Treatment  
28 or Punishment (CAT), and the amended War Crimes Act, which  
29 prohibit the torture of, and the cruel, inhuman, and degrading  
30 treatment or punishment of, detainees in United States custody;  
31 and be it further

32 *Resolved*, That the Legislature hereby requests all relevant  
33 California agencies to notify health professionals licensed in  
34 California that those who participate in coercive or “enhanced”  
35 interrogation, torture, as defined by CAT, or other forms of cruel,  
36 inhuman, or degrading treatment or punishment may one day be  
37 subject to prosecution; and be it further

38 *RESOLVED*, *That the Legislature hereby requests that when*  
39 *California licensed health professionals have reason to believe*  
40 *that interrogations are coercive or “enhanced” or involve torture*

1 *or cruel, inhuman, or degrading treatment or punishment, they*  
2 *shall report their observations to the appropriate authorities, and*  
3 *if the authorities are aware of those abusive interrogation*  
4 *practices, but have not intervened, then those health professionals*  
5 *are ethically obligated to report those practices to independent*  
6 *authorities that have the power to investigate and adjudicate those*  
7 *allegations; and be it further*

8 *Resolved*, That in view of the ethical obligations of health  
9 professionals, the record of abusive interrogation practices, and  
10 the Legislature's interest in protecting California-licensed health  
11 professionals, the Legislature hereby requests the United States  
12 Department of Defense and the Central Intelligence Agency to  
13 remove all California-licensed health professionals from  
14 participating in any way in prisoner and detainee interrogations  
15 that are coercive or "enhanced" or that involve torture or cruel,  
16 inhuman, or degrading treatment or punishment, as defined by the  
17 Geneva Conventions, CAT, relevant jurisprudence regarding CAT,  
18 and related human rights documents and treaties; and be it further

19 *Resolved*, That no law, regulation, order, or exceptional  
20 circumstance, whether induced by state of war or threat of war,  
21 internal political instability, or any other public emergency, may  
22 be invoked as justification for torture or cruel, inhuman, or  
23 degrading treatment or punishment; and be it further

24 *Resolved*, However, that California-licensed health professionals  
25 continue to provide appropriate health care if called upon to deal  
26 with a victim of the conduct and torture described in this resolution;  
27 and be it further

28 *Resolved*, That the Secretary of the Senate transmit copies of  
29 this resolution to the United States Department of Defense, the  
30 Central Intelligence Agency, and all relevant California agencies,  
31 including, but not limited to, the Board of Behavioral Sciences,  
32 the Dental Board of California, the Medical Board of California,  
33 the Osteopathic Medical Board of California, the Bureau of  
34 Naturopathic Medicine, the California State Board of Pharmacy,  
35 the Physician Assistant Committee of the Medical Board of  
36 California, the California Board of Podiatric Medicine, the Board  
37 of Vocational Nursing and Psychiatric Technicians, the Board of  
38 Psychology, and the Board of Registered Nursing.

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